THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.889 AND 9232 OF 2004

DATED AUGUST, 2007

BETWEEN

Kishan and another

… Petitioners

AND

Government of A.P., rep.by its Secretary, Tribal welfare Department, Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.889 AND 9232 OF 2004

COMMON ORDER:

The petitioner in W.P.No.889 of 2004 (hereafter referred to as first petitioner) purchased an extent of Acs.20.00 in survey No.144 and Acs.15.11 guntas in survey No.145 situated at Wadagaon village, Indravalli Mandal, Adilabad District under unregistered document, dated 25.06.1968. The same was allegedly executed before Tahsildar, Utnoor. The vendor of the land is non-tribal. The fourth respondent in W.P.No.889 of 2004 is son of vendor. The father of petitioner in W.P.No.9232 of 2004 (hereafter referred to as second petitioner) is allegedly owner and possessor of land admeasuring Acs.13.11 guntas and 13.26 guntas situated in survey Nos.56 and 57 respectively of Nagapur Village, Utnoor Mandal, Adilabad District. Originally said lands belong to one Gunda Pedda Narsimhulu, a non-tribal.

The third respondent herein initiated action under A.P.Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970 (hereafter called, the Regulation) and issued show cause notices to both writ petitioners as to why they should not be ejected for contravention of Section 3(1)(a) of the Regulation. Petitioners opposed the proceedings *inter alia* contending that the transfers in their favour were effected prior to coming into force of Regulation 1 of 1970, and therefore, the same is valid. Rejecting the contention, third respondent passed orders on 21.12.1984 ordering ejection of petitioners and directing to take lands into Government custody. Petitioners then filed appeals under Section 3(3)(a)(ii) of the Regulation before the Agent to Government – second respondent herein. The same were dismissed on 19.04.1990. The first petitioner alleges that copy of the order was not served on him by appellate authority. The operative portion of order was communicated, against which, petitioner filed writ petition being W.P.No.6530 of 1990. The same was disposed of by this Court on 08.11.1999 giving liberty to petitioner to file revision petition. The

revision petition filed by first petitioner was dismissed by first respondent vide G.O.Ms.No.119, dated 09.12.2003, against which writ petition No.889 of 2004 is filed. The second petitioner alleges that in the impugned order itself, it was recorded by first respondent that the father of petitioner has purchased the lands in 1969 before amendment of Regulation I of 1970. The revision petition filed by second petitioner was dismissed by first respondent vide G.O.Ms.No.38, dated 01.05.2004, against which writ petition No.9232 of 2004 is filed.

A counter affidavit is filed by Agent to Government. The averments therein are as follows. First petitioner purchased the subject land from Nago Rao in 1968 and Halafnama (affidavit) executed by Nago Rao is not a registered document. The first petitioner produced Xerox copy of Halafnama before original authority in support of the contention that he got the land under the said transaction. In view of Section 35 of Indian Stamp Act, 1899 the Halafnama cannot be considered as evidence. A sale is required to be registered under Section 17 of Indian Registration Act, 1908 and in the absence of such registration, as per Section 49 of the Registration Act, unregistered document shall not be considered as evidence of sale transaction in favour of petitioners.

Learned counsel for petitioners submits that non-service of copy of the order, dated 19.04.1990, by Agent to Government vitiates the entire proceedings initiated under the Regulation. He would urge that first petitioner is entitled to know the reasons or grounds, on which his appeal is dismissed and in the absence of such reasons being communicated, there is improper exercise of jurisdiction by appellate authority. According to learned counsel, the factum of petitioners filing revision petitions against the order of Agent, dated 19.04.1990 does not amount to acquiescence of petitioners, and therefore, this Court can still nullify the order passed by original authority as confirmed by appellate/revisional authorities. He placed reliance on **The Queen v Thomas**[1]. Secondly, he submits that original authority, namely, Special Deputy Collector exceeded jurisdiction. Under Rule 9 of A.P.Scheduled Areas Land Transfer Rules, 1969 (the Rules, for brevity), third respondent was conferred with the powers to summon the attendance of persons or to summon the production of documents under A.P.Revenue Summonses Act, 1869. Without resorting to such course of action to summon the original of Halafnama, third respondent rejected the document, which is not within the jurisdiction of statutory authority. Placing reliance on the decision of Supreme Court in **Deputy Collector v S.Venkata Ramanaiah**[2], learned counsel submits that so as to prove a transaction, there need not be any registered documents and all transactions by or under which a non-tribal has come into possession of land prior to Regulation I of 1970 are excluded from the operation of the Regulation.

Learned Government Pleader for Social Welfare submits that first petitioner was found to be not shown in the relevant Pahanis and from this an inference can be drawn that the transaction, he claimed in his favour was only after Regulation I of 1970 and to get over the same, a plea was taken that there was a transfer in his favour by Halafnama in 1968. Insofar as second writ petitioner is concerned, he submits that admittedly the sale deed in his favour was executed on 29.04.1970 after coming into force of Regulation I of 1970 with effect from 03.02.1970, and therefore, the transaction is void. He submits that as petitioners filed revision petitions against order of Agent to Government, first petitioner cannot now complain before this Court that non-service of copy of order of appellate authority would vitiate the proceedings, especially when he himself filed writ petition challenging order of Agent to Government.

The chronology of events referred to hereinabove would show that after ejection order passed by third respondent, petitioners filed appeals. Appellate authority dismissed both the appeals on 19.04.1999 and this fact was informed to petitioners by letter No.D4AG/86-84, dated Nil-4-1990 to both petitioners. This was in fact assailed in writ petitions filed by petitioners. At that stage, the grounds now urged were available to petitioners, but they did not do so. This only means that at that stage petitioners' plea, if any, was not considered and they were directed to file revision petitions or pursue the revision petitions, if they were already filed. Secondly, after writ petitions were disposed of by this Court, they filed revision petitions under Section 8 of the Regulation. Even before revisional authority, they did not demur on this aspect. Thirdly, the ground, which is urged across the bar now, has not even whispered in affidavit accompanying writ petitions. This only means that petitioners never complained about any prejudice due to non-service of order of appellate authority. Apart from, on question of prejudice, as seen from the revisional order, petitioners have raised two important grounds, namely, that Regulation I of 1970 is not retrospective and that the transaction under unregistered document prior to coming into force of Regulation I of 1970 is valid. Even if the order copy on them had been served on revisional authority, the grounds would have been the same. Therefore, non-service of reasoned order of appellate authority does not vitiate exercise of jurisdiction by authorities under the Regulation. Whatever defect, that is pointed out, stands cured by consideration bestowed by revisional authority.

Insofar as second contention is concerned, the same is misconceived. The second petitioner purchased land in survey Nos.56 and 57 admeasuring Acs.13.11 guntas and Acs.13.26 guntas respectively situated at Nagapur Village, Utnoor Mandal, Adilabad District under agreement of sale, dated 25.02.1969. On 29.04.1970, he obtained a registered sale deed from fourth respondent. Therefore, *ex facie* the registered sale transaction comes within the purview of Regulation.

Similarly, in W.P.No.889 of 2004, the transaction is claimed by reason of unregistered Halafnama. Whether an affidavit is registered or not, an affidavit as such, does not confer any title on the transferee. The legal position that transfer of immovable property by vendor to vendee can only be effected by registered document is not seriously disputed.

The decision in **S.Venkata Ramanaiah** (supra) does not in any manner help learned counsel for petitioners. It was laid down therein as under.

> It is not possible to agree with this contention for the simple reason that before the continued possession is found fault with, it must be shown that the initial entry of the transferee was violative of any provision of law or that by any subsequent statute such continuance of possession under an originally valid transaction would get adversely affected. Section 3(1) nowhere whispers about such an eventuality. On the contrary, employment of terminology to the effect, 'transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of a scheduled tribe' clearly indicates that Section 3(1)(a) seeks to hit only those transfers which take place after the coming into force of that provision and when such transfers are found to be absolutely null and void then only the question of continued illegal possession of such transferee and of evicting such transferee from the land and restoration of such land to the transferor would arise under Section 3(2) (a).

The question before Supreme Court was whether Regulation I of 1959, Regulation I of 1963 and Regulation I of 1970 are retrospective or not. In the background of such question, Supreme Court made the above observations. Even as pointed out by their Lordships, if a pre 1959, 1963 and 1970 transaction is legally valid, such transaction alone is saved by the Law declared by Supreme Court in **S.Venkata Ramanaiah** (supra). In these writ petitions, initial transactions, by reason of which petitioners came into possession of lands in agency area, were certainly illegal as found by all the authorities. The finding is unassailable.

The writ petitions are devoid of any merit and are accordingly dismissed. No costs.

(V.V.S.RAO,J)

.08.2007.
pln

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[1] 1892 QB 2426

[2] AIR 1996 SC 224